

**Order 2002-7-29**



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC**

Issued by the Department of Transportation  
on the 22<sup>nd</sup> day of July , 2002

**Served: July 22, 2002**

Application of

**EMERY WORLDWIDE AIRLINES, INC.  
and  
EXPRESS.NET AIRLINES, LLC**

for approval of a transfer of route authority  
pursuant to 49 U.S.C. §41105

**Docket OST-2002-12712**

**ORDER**

**SUMMARY**

By this order we dismiss the joint application of Emery Worldwide Airlines, Inc. (EWA) and Express.Net Airlines, LLC ("Joint Applicants") for transfer of route authority for U.S.-Mexico service.

**APPLICATION**

On July 5, 2002, the Joint Applicants requested transfer of Emery Worldwide Airlines' Route 743 U.S.-Mexico certificate authority to Express.Net.<sup>1</sup> At page 4 of their application, the Joint Applicants address the issue of the status of this authority. In this regard, they state that EWA's "certificate for Route 743 has been suspended under the terms of 14 C.F.R. §204.7 since August 13, 2001, when EWA suspended all flight operations." They further state that the "certificate provides that its dormancy conditions do not apply if 'the Department earlier suspends' the authority, as it has here under Section 204.7." The Joint Applicants request the Department to transfer the route authority on an expedited basis and to designate Express.Net for U.S.-Mexico all-cargo scheduled services as soon as possible.

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<sup>1</sup> The Department originally granted EWA this certificate by Order 97-4-27 and most recently reissued the certificate authority by Order 2001-4-15.

## DECISION

We are dismissing the application for route transfer of U.S.-Mexico authority on the grounds that EWA does not have any such authority to transfer to another party.

Under the provisions of the U.S.-Mexico certificate we issued EWA in Order 2001-4-15, the authority to serve any segment was to expire on its own terms if the carrier discontinued services on a route segment for 90 days or longer. In addition, the certificate required EWA to give the Department notice as soon as the decision to discontinue service was made, but in no case later than the 91<sup>st</sup> day of dormancy.

By letter dated August 14, 2001, the Chief, Air Carrier Fitness Division, Office of Aviation Analysis, notified EWA that the Department had been advised by the Federal Aviation Administration of EWA's decision voluntarily to suspend operations as of August 13, 2001.<sup>2</sup> That letter reminded EWA that

The Department's aviation economic regulations (14 CFR 204.7) provide that, if a carrier ceases conducting operations for which it was found fit, willing and able, its DOT authority to conduct those operations is *automatically* suspended as of the date that those operations ceased. Moreover, it cannot resume operations unless the Department determines that it is fit to do so. Therefore, Emery may not recommence certificated operations nor advertise such service until its fitness to do so has been re-established by this office. This redetermination of fitness must be accomplished within one year of the date of the cessation of service (that is, by August 13, 2002); otherwise, the carrier's certificate will be revoked for dormancy. [Emphasis added]

Given EWA's voluntary cessation of all operations on August 13, 2001; given its failure to resume operations within 90 days; and given the terms of the Certificate of Public Convenience and Necessity for Route 743, specifically including the 90-day dormancy condition in that certificate; all authority to serve the named segments on that certificate expired 90 days after EWA stopped operations, *i.e.*, November 11, 2001.

The Joint Applicants maintain that the Department suspended EWA's U.S.-Mexico certificate. They assert that the dormancy condition therefore did not apply and that Emery still holds effective certificate authority which can be transferred. We disagree. Under the provisions of EWA's certificate for Route 743 (condition 14), and under the Department's regulations (14 CFR 204.7(b)), the carrier's entire authority under that certificate (and all of its other certificates) was in fact *automatically* suspended when the carrier voluntarily suspended its operations. The Department did not *act* to suspend, modify, or delete the carrier's authority to serve any of the route segments contained in its U.S.-Mexico certificate. The automatic suspension of its certificates did not countermand the dormancy provisions in the U.S.-Mexico certificate, and the authority to serve each of the route segments in the U.S.-Mexico certificate accordingly expired.

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<sup>2</sup> Emery voluntarily suspended all operations, not just its U.S.-Mexico services.

Finally, we see this result as consistent with the public interest since it would avoid a situation where a carrier, by ceasing its operations, could defeat the public policy objectives underlying our dormancy conditions.

In these circumstances, we dismiss the application for transfer of route authority in Docket OST-2002-12712.

**ACCORDINGLY,**

1. We dismiss the application in Docket OST-2002-12712; and
2. We will serve this order on Emery Worldwide Airlines, Inc., Express.Net Airlines, LLC, and other carriers served with the application, the Ambassador of Mexico in Washington, DC; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

**READ C. VAN DE WATER**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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